

AMENDED IN SENATE MAY 7, 2013  
AMENDED IN SENATE APRIL 18, 2013

**SENATE BILL**

**No. 425**

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**Introduced by Senator DeSaulnier  
(Coauthors: Senators Gaines and Liu)**

February 21, 2013

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An act to add Chapter 11 (commencing with Section 8847) to Division 1 of Title 2 of the Government Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

SB 425, as amended, DeSaulnier. Public works: the Public Works Peer Review Act of 2013.

Existing law defines a public work as construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds; work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type; street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state; or of any political subdivision or district thereof, and public transportation demonstration projects, as specified.

This bill would ~~require~~ *allow* a public agency, principally tasked with ~~administering the planning, development, and operation of~~ *administering, planning, developing, and operating a public works* project, to establish a specified peer review group, ~~to provide it with expert advice on the scientific and technical aspects of the project if the public works is a megaproject, defined as having total development, construction, and reasonable projected maintenance costs exceeding \$1,000,000,000; if the Governor or the head of the administering agency has determined that the establishment of a peer review group is in the~~

~~public interest in connection with the development and construction of the project; or if a statute or concurrent resolution is passed by the Legislature requiring the administering agency to do so. The bill would prohibit a peer review group from meeting or taking any action until a charter is filed with the head of the administering agency and the relevant standing committees of the Legislature and is posted on the administering agency's Internet Web site, stating the group's objective, the scope of its activities, and a description of the duties for which the group is responsible, among other things as defined, and would require the administering agency, if a peer review group is established, to draft a charter, published on the agency's Internet Web site, related to the duties of the peer review group.~~

~~Existing law, the Political Reform Act of 1974, prohibits a public official at any level of state or local government from making, participating in making, or in any way attempting to use his or her official position to influence a governmental decision in which he or she knows, or has reason to know, he or she has a financial interest. A violation of the act is a crime.~~

~~This bill would require a member of a peer review group, within 30 days of joining the group, to file specified forms with the Fair Political Practices Commission, under penalty of perjury, stating his or her economic interests, and declaring himself or herself to be independent of all parties involved in the project and to have no conflicts of interest.~~

~~Because the bill would expand the definition of a crime under the act, it would impose a state-mandated local program.~~

~~Existing constitutional provisions require that a statute that limits the right of access to public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.~~

~~This bill would make legislative findings to that effect.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

Vote:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes-no.

1 (C) A statement of the expertise and balance of interests required  
2 of the group membership to perform its charge.

3 (D) The name of the administering agency and official to whom  
4 the group reports.

5 (E) A description of the duties for which the group is  
6 responsible.

7 (F) The estimated number and frequency of group meetings.

8 (G) The estimated annual operating costs for the group.

9 (H) A statement that authorizes a peer reviewer to conduct his  
10 or her duties under the charter impartially, without restriction or  
11 limitation, and in a manner the peer reviewer believes is necessary  
12 to appropriately review a proposed project.

13 (I) A statement that declares whether the members of the peer  
14 review group have signed a conflict of interest disclosure form  
15 that would identify real or perceived conflicts between a peer  
16 reviewer and the specified public works project.

17 SECTION 1. Chapter 11 (commencing with Section 8847) is  
18 added to Division 1 of Title 2 of the Government Code, to read:

19  
20 CHAPTER 11. THE PUBLIC WORKS PROJECT PEER REVIEW ACT  
21 OF 2013  
22

23 8847. This chapter shall be known and may be cited as the  
24 Public Works Project Peer Review Act of 2013.

25 8847.1. For purposes of this chapter, the following terms have  
26 the following meanings, unless expressly stated otherwise:

27 (a) "Administering agency" means a public agency, excluding  
28 an "exempt agency" principally tasked with administering the  
29 planning, development, and operation of a project.

30 (b) "Auditor" means the Bureau of State Audits.

31 (c) "Conflict of interest" means a reviewer or a relative or  
32 professional associate of the reviewer has a financial or other  
33 interest in a project or with a project sponsor that is known to the  
34 reviewer and is likely to bias the reviewer's evaluation of that  
35 project. A reviewer has a conflict of interest if any of the following  
36 apply to him or her or to a close relative or professional associate  
37 of the reviewer:

38 (1) He or she has received or could receive a direct financial  
39 benefit of any amount deriving from a project sponsor or any  
40 contractor connected to the project under review.

1 ~~(2) Apart from any direct financial benefit deriving from a~~  
2 ~~project sponsor or contractor connected to the project under~~  
3 ~~review, he or she has received or could receive an indirect financial~~  
4 ~~benefit from a project sponsor or contractor that in the aggregate~~  
5 ~~exceeds ten thousand dollars (\$10,000) per year, including~~  
6 ~~honoraria, fees, stock or other financial benefit, and the current~~  
7 ~~value of the reviewer's already existing stock holdings.~~

8 ~~(3) He or she has the appearance of a conflict of interest that~~  
9 ~~would cause a reasonable person to question the reviewer's~~  
10 ~~impartiality if he or she were to participate in the review.~~

11 ~~(4) He or she has any other interest in the project, project~~  
12 ~~sponsor, or any connected contractor that, in the view of a~~  
13 ~~reasonable person, is likely to bias the reviewer's evaluation of~~  
14 ~~that project.~~

15 ~~(d) "Exempt agency" means the California Water Commission,~~  
16 ~~California Department of Water Resources, or any state, regional,~~  
17 ~~or local public entity or district engaged in storing, supplying,~~  
18 ~~transporting, distributing, or delivering water.~~

19 ~~(e) "Megaproject" means a project with total development,~~  
20 ~~construction, and reasonable projected maintenance costs exceeding~~  
21 ~~one billion dollars (\$1,000,000,000).~~

22 ~~(f) "Peer review group" means a group of persons qualified by~~  
23 ~~training and experience in particular scientific or technical fields,~~  
24 ~~or as authorities knowledgeable in the various disciplines and fields~~  
25 ~~related to the public works project under review, who give expert~~  
26 ~~advice on the scientific and technical aspects of the project as~~  
27 ~~described in this chapter.~~

28 ~~(g) "Project" means a public works project as public works is~~  
29 ~~defined in Section 1720 of the Labor Code that will be owned by~~  
30 ~~a public agency, excluding an exempt agency.~~

31 ~~(h) "Project sponsor" means any public agency that funds a~~  
32 ~~project, including a federal, state, local, or other entity, or the~~  
33 ~~administering agency.~~

34 ~~8848. (a) The administering agency of a project shall establish~~  
35 ~~a peer review group if any of the following circumstances apply:~~

36 ~~(1) The project is a megaproject.~~

37 ~~(2) The Governor, or the head of the administering agency~~  
38 ~~involved, has determined that the establishment of a peer review~~  
39 ~~group is in the public interest in connection with the development~~  
40 ~~and construction of a project.~~

1     ~~(3) A statute or concurrent resolution is passed by the Legislature~~  
2     ~~requiring the administering agency to establish a peer review group.~~

3     ~~(b) Unless otherwise provided in statute, an administering~~  
4     ~~agency shall not establish a peer review group other than under~~  
5     ~~the provisions of this chapter.~~

6     ~~8849. (a) A peer review group shall not meet or take any action~~  
7     ~~until a charter has been written by the administering agency and~~  
8     ~~filed with the relevant standing committees of the Legislature. The~~  
9     ~~charter also shall be posted on the administering agency's Internet~~  
10    ~~Web site and shall contain all of the following information:~~

11    ~~(1) The group's official name or designation.~~

12    ~~(2) The group's objective and the scope of its activities.~~

13    ~~(3) A statement of the expertise and balance of interests required~~  
14    ~~of the group membership to perform its charge.~~

15    ~~(4) The name of the administering agency and official to whom~~  
16    ~~the group reports.~~

17    ~~(5) A description of the duties for which the group is responsible.~~

18    ~~(6) The estimated number and frequency of group meetings.~~

19    ~~(7) The estimated annual operating costs for the group.~~

20    ~~(b) Before establishing a peer review group, an administering~~  
21    ~~agency shall develop a transparent process for selecting members~~  
22    ~~of the group. The auditor shall review the process by which the~~  
23    ~~administering agency comprised the peer review group, to warrant~~  
24    ~~that the process was followed.~~

25    ~~(c) The administering agency shall enter into a contract with~~  
26    ~~each of the peer review group members that requires each member~~  
27    ~~to do all of the following:~~

28    ~~(1) File the Statement of Economic Interest, Form 700, with the~~  
29    ~~Fair Political Practices Commission.~~

30    ~~(2) Commit, upon penalty of perjury, to comply with the conflict~~  
31    ~~of interest requirements of this chapter.~~

32    ~~8850. Components of megaprojects that must be evaluated by~~  
33    ~~a peer review group include, but are not limited to, the following:~~

34    ~~(a) Project demand studies.~~

35    ~~(b) Design and engineering models and estimates.~~

36    ~~(c) Construction, testing, and inspection practices.~~

37    ~~8851. All of the following shall apply to members of a peer~~  
38    ~~review group:~~

39    ~~(a) A member shall, within 30 days of joining the group, file~~  
40    ~~the statements required under Sections 87202 and 87202.1, under~~

1 ~~penalty of perjury, stating his or her economic interests, and~~  
2 ~~declaring himself or herself to be independent of all parties~~  
3 ~~involved in the project and to have no conflicts of interest.~~

4 ~~(b) A member shall be reimbursed only for actual expenses, for~~  
5 ~~example, transportation and room and board costs, plus one~~  
6 ~~hundred dollars (\$100) per day he or she performs work in the~~  
7 ~~review.~~

8 ~~(c) A member shall have some expertise involving the work to~~  
9 ~~be reviewed, but need not be an expert in the specific field.~~

10 ~~(d) If a member feels unable to provide objective advice, he or~~  
11 ~~she shall recuse himself or herself from the peer review group.~~

12 ~~8852. (a) All of the following shall apply to peer review group~~  
13 ~~meetings:~~

14 ~~(1) An agenda and relevant documents shall be posted on the~~  
15 ~~administering agency's Internet Web site at least one week before~~  
16 ~~the meeting.~~

17 ~~(2) The meeting shall be held in a publicly accessible forum.~~

18 ~~(3) The meeting shall contain a public participation component,~~  
19 ~~including presentations identifying specific issues to be discussed~~  
20 ~~or reviewed, and any other relevant presentations from the~~  
21 ~~administering agency.~~

22 ~~(b) All documentation related to the issues to be reviewed at a~~  
23 ~~peer review group meeting, to the extent possible without putting~~  
24 ~~the administering agency at a negotiating disadvantage, shall be~~  
25 ~~made available to the public upon request.~~

26 ~~(c) (1) In order to evaluate matters that relate to personnel,~~  
27 ~~design standards, contract amounts, or other issues that may put~~  
28 ~~the administering agency at a negotiating disadvantage, a meeting~~  
29 ~~of a peer review group subject to this act may be exempt in part~~  
30 ~~from the requirements of the Bagley-Keene Open Meeting Act~~  
31 ~~(Article 9 (commencing with Section 11120) of Division 3), at the~~  
32 ~~discretion of the head of the administering agency to whom the~~  
33 ~~peer review group reports, unless that meeting includes~~  
34 ~~participation by one or more full-time, or permanent part-time,~~  
35 ~~officers or employees of the administering agency.~~

36 ~~(2) This section shall not preclude a full-time, or permanent~~  
37 ~~part-time, officer or employee of the administering agency from~~  
38 ~~supplying administrative support to a peer review group. Support~~  
39 ~~staff shall not divulge the contents of a closed-door meeting. The~~

1 head of the administering agency shall be responsible for ensuring  
2 compliance with Section 11228.

3 ~~8853. This chapter shall not apply to the peer review group~~  
4 ~~created pursuant to Section 185035 of the Public Utilities Code.~~

5 ~~SEC. 2. The Legislature finds and declares that this act imposes~~  
6 ~~a limitation on the public's right of access to the meetings of public~~  
7 ~~bodies or the writings of public officials and agencies within the~~  
8 ~~meaning of Section 3 of Article I of the California Constitution.~~  
9 ~~Pursuant to that constitutional provision, the Legislature makes~~  
10 ~~the following finding to demonstrate the interest protected by this~~  
11 ~~limitation and the need for protecting the interest:~~

12 ~~The public interest in nondisclosure pursuant to this act~~  
13 ~~outweighs the public interest in disclosure, because requiring the~~  
14 ~~public disclosure of the internal deliberations of peer review groups~~  
15 ~~could impair the soundness of the group's evaluation and~~  
16 ~~disadvantage the administering agency in contract negotiations.~~

17 ~~SEC. 3. No reimbursement is required by this act pursuant to~~  
18 ~~Section 6 of Article XIII B of the California Constitution for certain~~  
19 ~~costs that may be incurred by a local agency or school district~~  
20 ~~because, in that regard, this act creates a new crime or infraction,~~  
21 ~~eliminates a crime or infraction, or changes the penalty for a crime~~  
22 ~~or infraction, within the meaning of Section 17556 of the~~  
23 ~~Government Code, or changes the definition of a crime within the~~  
24 ~~meaning of Section 6 of Article XIII B of the California~~  
25 ~~Constitution.~~

26 ~~However, if the Commission on State Mandates determines that~~  
27 ~~this act contains other costs mandated by the state, reimbursement~~  
28 ~~to local agencies and school districts for those costs shall be made~~  
29 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
30 ~~4 of Title 2 of the Government Code.~~

31 ~~SEC. 4. The Legislature finds and declares that this bill furthers~~  
32 ~~the purposes of the Political Reform Act of 1974 within the~~  
33 ~~meaning of subdivision (a) of Section 81012 of the Government~~  
34 ~~Code.~~